

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTOPHER ATKINS,

Plaintiff.

v.

DAVID EBBERT,

Defendant.

No. 4:18-CV-2031

(Judge Brann)

(Magistrate Judge Carlson)

ORDER

JANUARY 8, 2019

1. On October 18, 2018, Plaintiff petitioned this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Plaintiff simultaneously filed a Motion for Leave to Proceed In Forma Pauperis.
2. On October 22, 2018, Magistrate Judge Martin C. Carlson issued a Report and Recommendation conditionally granting Plaintiff's motion for leave to proceed in forma pauperis but recommending that this Court dismiss without prejudice Plaintiff's petition for habeas relief. Magistrate Judge Carlson explained that Plaintiff's habeas petition was not appropriately brought under 28 U.S.C. § 2241, and accordingly recommended dismissal without prejudice so that Plaintiff may refile his action with the United States Court of Appeals for the Sixth Circuit as a request to file a second and successive motion under 28 U.S.C. § 2255.

3. Plaintiff objected to this Report and Recommendation on October 22, 2018.
4. As a result of Plaintiff's objections, this Court has reviewed the Report and Recommendation *de novo*.¹
5. Finding that Plaintiff's objections are meritless, particularly because Plaintiff has not demonstrated that § 2255 would be "inadequate or ineffective to test the legality of his detention,"² this Court **ADOPTS** the Report and Recommendation, ECF No. 4, in its entirety.
6. Therefore, **IT IS HEREBY ORDERED** that Plaintiff's petition for habeas relief pursuant to 28 U.S.C. § 2241, ECF No. 1, is **DISMISSED** for lack of jurisdiction³ but **WITHOUT PREJUDICE** to Plaintiff taking this action before the appropriate court of appeals to preserve and present this issue as a second or successive motion under 28 U.S.C. § 2255.
7. The Clerk of Court is directed to close this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge

¹ 28 U.S.C. § 636(b)(1).

² 28 U.S.C. § 2255. *See also Cradle v. U.S. ex rel. Miner*, 290 F.3d 536, 538 (3d Cir. 2002).

³ *See Application of Galante*, 437 F.2d 1164, 1165 (3d Cir. 1971) (explaining that if a petitioner improperly challenges a federal conviction or sentence under § 2241, the petition must be dismissed for lack of jurisdiction).